83-1114

FILED
JAN 25 1984
ALEXANDER L. STEVAS,
CLERK

No. 1114

In the Supreme Court of the United States

OCTOBER TERM: 1983

G. HAROLD KING, JR., APPELLANT
Petitioner

versus

FIDELITY NATIONAL BANK
OF BATON ROUGE
Respondent

OPPOSITION OF FIDELITY NATIONAL BANK OF BATON ROUGE TO APPLICATION OF G. HAROLD KING, JR. FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX OF FIDELITY NATIONAL BANK OF BATON ROUGE

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 82-3379

G. HAROLD KING, JR. and
SHIRLEY G. KING,

Plaintiffs-Appellants,

versus

FIDELITY NATIONAL BANK OF BATON ROUGE,
CAPITAL INVESTMENT INC. and LOUISIANA
EQUITY CAPITAL CO.,

Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Louisiana

ON PETITIONS FOR REHEARING
(October 11, 1983)

Before GARZA, RANDALL and GARWOOD, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petitions for rehearing filed in the above entitled and numbered cause be and the same are hereby denied.

ENTERED FOR THE COURT:

/s/ CAROLYN DINEEN RANDALL
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 82-3754

G. HAROLD KING, JR., and
SHIRLEY G. KING,

Plaintiffs-Appellants,

versus

FIDELITY NATIONAL BANK
OF BATON ROUGE,

Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Louisiana

ON PETITION FOR REHEARING
(September 30, 1983)

Before GARZA, RANDALL and GARWOOD, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ CAROLYN DINEEN RANDALL
United States Circuit Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

G. HAROLD KING, JR.,	:	CA 81-851-A, 81-852 &
ET AL.	:	853-A, 81-929-A & 81-
VS.	:	1037-A
FIDELITY NATIONAL	:	Bankruptcy Court Docket
BANK OF BATON ROUGE,	:	
ET AL.	:	Number 81-00329

JUDGMENT

In accordance with the mandate of the United States Court of Appeals for the Fifth Circuit issued October 21, 1983 in Docket Number 82-3379 of that Court:

IT IS ORDERED that this matter be remanded to the United States Bankruptcy Court for the Middle District of Louisiana, and that Court is ordered and directed to vacate the order for relief against Shirley King and dismiss the petition against her.

Baton Rouge, Louisiana, November 10, 1983.

/s/ JOHN V. PARKER
Chief Judge
Middle District of Louisiana

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:	:	CIVIL ACTION NO. 81-
G. HAROLD KING, JR.,	:	851-A, 81-852-A, 81-853-
AND SHIRLEY G. KING	:	-A, 81-929-A, 81-1037-A

NOTICE OF APPEAL

Notice is hereby given that FRANZ JOSEPH BADDOCK, G. HAROLD KING, JR., and SHIRLEY G. KING, defendants, hereby appeal to the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT from the Findings and Reasons entered and filed herein on May 19, 1982, and the Final Judgment thereon entered and filed herein on May 20, 1982.

BATON ROUGE, Louisiana
June 14, 1982

/s/ FRANZ JOSEPH BADDOCK,
in behalf of himself and as
Attorney for G. HAROLD
KING, JR. and SHIRLEY G.
KING.
Appellants
Post Office Box 3573
Baton Rouge, Louisiana 70821
(Tel.: (504) 343-9194)

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:	:	
G. HAROLD KING, JR. AND	:	
SHIRLEY G. KING	:	DOCKET NUMBER
	:	81-00329

JUDGMENT

In accordance with the Judgment of the United States District Court for the Middle District of Louisiana, dated November 10, 1983, in the cause entitled "G. HAROLD KING, JR., ET AL. v. FIDELITY NATIONAL BANK OF BATON ROUGE, ET AL., and in Docket Numbers CA 81-851-A, 81-852 & 853-A, 81-929-A & 81-1037-A of that Court:

IT IS ORDERED, ADJUDGED, AND DECREED that the order for relief entered against Shirley G. King by Judgment of this Court dated November 10, 1981, is herewith vacated, and the petition filed against her by the Fidelity National Bank of Baton Rouge on July 24, 1981, as well as the intervening petitions filed against her by Capital Investments, Inc. and Louisiana Equity Capital Corporation on August 28, 1981, are herewith dismissed.

BATON ROUGE, Louisiana, November 15, 1983.

/s/ WESLEY W. STEEN
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:	:	DOCKET NUMBER-
	:	81-00329
	:	
G. HAROLD KING AND	:	
SHIRLEY G. KING	:	

JUDGMENT

This matter came for hearing on November 10, 1981. Present in Court: David S. Rubin, Attorney for Fidelity National Bank of Baton Rouge; Franz Joseph Baddock, Attorney for G. Harold King, Jr. and Shirley G. King; and Louis Phillips, Attorney for Louisiana Equity Capital Corporation and Capital Investments, Inc.

CONSIDERING the pleadings filed in this matter, the depositions and affidavits filed in this matter, and the presentations of counsel, after hearing the evidence, considering the law and evidence to be in favor thereof.

IT IS HEREBY ORDERED that the Motion of Debtors to Dismiss the Petition for Failure to State a Claim and for Lack of Jurisdiction is denied; and

IT IS FURTHER ORDERED that the Motion to Dismiss the Interventions of Louisiana Equity Capital Corporation and Capital Investments, Inc. is denied; and

IT IS FURTHER ORDERED that the Motion of Debtors to Strike the Claim of Fidelity National Bank of Baton Rouge is denied; and

IT IS FURTHER ORDERED that the Motion for Summary Judgment filed by the Debtors is denied; and

IT IS FURTHER ORDERED that the Motion for Summary Judgment filed by Fidelity National Bank of Baton Rouge is hereby granted, and an Order for Relief is hereby entered.

JUDGMENT RENDERED at Baton Rouge, Louisiana, this 10th day of November, 1981.

JUDGMENT SIGNED at Baton Rouge, Louisiana, this 10th day of November, 1981.

/s/ A. LEON HEBERT
United States Bankruptcy Judge

1 Collier on Bankruptcy (15th ed.) ¶ 3.01[4][c][iii]

[iii]—Jury Trials in Involuntary Cases. 28 U.S.C. § 1480(b).

Section 1480(b) provides that:

"The bankruptcy court may order the issues arising under section 303 of title 11 to be tried without a jury."

• • •

With this interpretation of section 1480(b) kept in mind, the mandate of the section is clear: the bankruptcy judge is to have complete discretion in determining whether or not these issues are to be tried by a jury. Although as an initial matter, the debtor is entitled to a jury on these issues under the general rule of section 1480(a), the judge, apparently *sua sponte* or upon the motion of the petitioning creditors, may direct that a jury trial not be held. At least this much of the statute is open to no other interpretation.

28 U.S.C. § 956. Powers and duties of clerks and deputies

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.